

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

10 - - - - - x

11 Adv. Case No. 23-01138-mg

12 - - - - - x

13 CELSIUS NETWORK LIMITED,

14 Plaintiff,

15 v.

16 STAKEHOUND SA,

17

18 Defendant.

19 - - - - - x

20 United States Bankruptcy Court

21 One Bowling Green

22 New York, NY 10004

23

24 August 2, 2023

25 11:03 AM

1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: KS

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1 Adversary proceeding: 23-01138-mg Celsius Network Limited v.
2 StakeHound SA Hybrid
3 HEARING re Plaintiff Celsius Network Limiteds Motion for an
4 Order Authorizing Alternative Service on Defendant
5 StakeHound SA Pursuant to Federal Rule of Civil Procedure
6 4(f)(3). (Doc## 9, 10, 13, 15 to 19)

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 MR. HURLEY: Mitch Hurley, with Akin Gump Strauss
3 Hauer Feld, on behalf of the Debtor as special litigation
4 counsel.

5 THE COURT: All right. So we're here in the
6 adversary proceeding, Celsius Network Limited v. StakeHound
7 SA. It's 23-01138. It's in connection with the Celsius
8 motion for an order authorizing alternative service of the
9 Defendant.

10 MR. HURLEY: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. HURLEY: Mitch Hurley, with Akin Gump Strauss
13 Hauer Feld, special litigation counsel, on behalf of
14 Celsius.

15 Your Honor, this morning we're here on a very
16 narrow request for relief, which is permission to serve
17 StakeHound, which is a Swiss entity, by alternate means
18 under Rule 4(f)(3).

19 Your Honor, in considering a motion of this kind,
20 there are two overarching inquiries the Court has to make.
21 The first is whether it has discretion to order the proposed
22 form of alternative service, and the second is whether it
23 should exercise that discretion. We submit that the answer
24 to both questions is clearly, yes, under the circumstances
25 of this case.

1 I want to start with the question of whether the
2 Court has discretion, and that question involves two further
3 inquiries. One is the proposed formal alternative service,
4 prohibited by an international agreement. Two, if the
5 answer to that question is no, is the proposed form of
6 service reasonably calculated to provide actual notice of
7 the complaint to the Defendant, so that it can appear and
8 respond? We think the answer to those questions show
9 without a shadow of a doubt that the Court has discretion to
10 enter the relief that we're seeking. And let me start with
11 a question of whether or not the proposed form of service is
12 prohibited by an international agreement.

13 Celsius has proposed two forms of alternative
14 service, both by email. One is email to Albert Castellana,
15 who is the co-founder and CEO of StakeHound. We understand
16 on information belief he is a Spanish citizen and lives in
17 Spain. The other proposed method of service is delivery of
18 the complaint to StakeHound U.S. counsel, the Lockee Lord
19 firm, who is here at counsel's table.

20 Now, we submit neither of those forms of service,
21 Your Honor, is forbidden by an international agreement. Let
22 me just start briefly with service through email to Mr.
23 Castellana.

24 It is the case that Switzerland -- again,
25 StakeHound is a Swiss company and it is the case that

1 Switzerland has objected to Article 10 of The Hague
2 Convention -- Article 10 provides unless the nation objects
3 for service through postal channels. Many cases, and we've
4 cited many of them to Your Honor in our papers, have found
5 that an objection by a nation to Article 10 to service
6 through postal channels does not encompass service via
7 email. It doesn't count.

8 THE COURT: Well, I know that the law in the
9 Southern District, the District Court, but none of which are
10 binding on me, but there's a split in the (indiscernible).
11 And I'll tell you, I found Judge Woods' opinion quite
12 persuasive, where he did not permit email service on China.

13 MR. HURLEY: Yeah. So, I guess two things there.

14 THE COURT: So can you distinguish that, that
15 decision?

16 MR. HURLEY: So, first of all, it is service in
17 China in the in Smart Study case that you're referring to.
18 And here we're talking about service in Switzerland.

19 THE COURT: I understand.

20 MR. HURLEY: The Smart Study case, Judge Woods
21 specifically pointed to evidence that hadn't been presented
22 to him in that case through affidavits of Chinese legal
23 specialists from Columbia University, where he found that
24 statements made by the Supreme People's Court of China
25 indicated that in China's case its intention was to object

1 to service by email, not just by postal channels. There
2 hasn't been any evidence of that kind submitted here.

3 There have been numerous cases since Smart Study
4 was decided that have gone the other direction. And, you
5 know, we submit those cases are better reason and we can
6 have an interesting debate about that, Your Honor. And I'm
7 happy to discuss it further if you wish.

8 THE COURT: Are there any cases that have
9 authorized email service to Switzerland?

10 MR. HURLEY: There are. We cited one case that
11 authorized email service to Switzerland in our papers from
12 the Southern District. It is before Smart Study. In
13 fairness, I think it's from 2007, but yes.

14 THE COURT: Who was the judge.

15 MR. HURLEY: I apologize, Your Honor. I don't
16 have that at my fingertips. But I can get it easily and
17 perhaps -- yeah, okay. We'll get that information for you,
18 Your Honor.

19 I would submit, though, Your Honor doesn't have to
20 reach this question, which admittedly involves the split of
21 authority, because we have offered another proposed approach
22 to affecting service via alternate means on StakeHound, and
23 that is through StakeHound's U.S. counsel.

24 For the proposition that that form of service is
25 not forbidden by international agreement, we have no lesser

1 an authority than the United States Supreme Court and
2 Volkswagen. In that case, the United States Supreme Court
3 held that service of papers on a U.S. subsidiary of the
4 foreign defendant --

5 THE COURT: I view serving a subsidiary as
6 entirely different than serving U.S. counsel. It would
7 serve as a major impediment to seeking advice of counsel in
8 the U.S. if by virtue of hiring that counsel, you're
9 subjecting yourself to service through the counsel on that
10 ruling. But that's the major -- and I haven't found the
11 cases that address that specific concern.

12 MR. HURLEY: So, there actually is a case that we
13 cite, Your Honor, that addresses that exact concern. And I
14 have the name of it right here. It is the Paushok case,
15 which is a 2020 S.D.N.Y. case. Very similar circumstances,
16 Your Honor; actually, one material difference that favors
17 our position. In that case counsel appeared and contested
18 service and the Court found, effectively, service is about
19 notice. It's not about gamesmanship. It's just about
20 notice. Is it possible for me to come to --

21 THE COURT: Who was the judge?

22 MR. HURLEY: Again, I don't have that information.
23 The site is 487 F. Supp. 3d 243, but we'll get that too.
24 And in a lengthy statement, which we block quoted in our
25 paper, said effectively, yeah, there's some awkwardness

1 about the fact that counsel has appeared to contest service
2 in this case, and that means that service is going to be
3 available. But that's basically what the Federal Rules
4 require because the inquiry --

5 THE COURT: Well, you know, the case law involving
6 entirely domestic cases, there are cases that deal with
7 service on counsel. And those cases focus on whether there
8 was actual or implied authority of counsel to accept
9 service. And absent actual or implied authority to accept
10 service, they do not recognize service on counsel as
11 effective service. So, that's in the purely domestic
12 context. That's not in the international context.

13 But why should it not be allowed in the domestic
14 context but permitted in the international context?

15 MR. HURLEY: So, we cited a number of cases, Your
16 Honor, that addressed this exact point that say,
17 effectively, the question is not whether the law firm has
18 been authorized by his client to accept service. The
19 question is only whether, if the materials are transmitted
20 to that law firm, it is likely reasonably calculated to
21 result in notice to the client.

22 THE COURT: So, let's assume for purposes of
23 discussion that I totally accept the proposition that Ms.
24 Wickouski received service, that that will provide notice to
25 StakeHound. Okay? But that doesn't get you quite there.

1 MR. HURLEY: So, let me back up and I want to make
2 sure one thing is crystal clear. This is not a case where
3 the U.S. law firm was retained expressly to respond to
4 dispute service of process. This is not that case.

5 So, in this case, the Lockee Lord firm was
6 retained by StakeHound before we even filed the complaint.
7 They were retained by StakeHound, of course, long before we
8 filed our motion to affect an alternate form of service. So
9 they were not retained for purposes of this motion here,
10 Your Honor.

11 They were retained previously. I don't know
12 exactly when. You saw the correspondence that we presented
13 to Your Honor about our pre-complaint filing communications.
14 Those communications indicated with crystal clarity that
15 Lockee Lord is in regular, perhaps even daily, contact with
16 its client. There is absolutely zero doubt that if the
17 papers are delivered to Locke Lord, they will make their way
18 to StakeHound, and almost certainly already have.

19 We cited in our papers, Your Honor, cases that
20 find when you're talking about U.S. counsel, you can
21 actually presume because they're an officer of the Court,
22 that if they are directed to provide those papers to their
23 client, that they will do so. So that second prong related
24 to whether or not Your Honor has discretion, we submit, is
25 overwhelmingly met here.

1 So, not only is the form of service not prevented
2 by or permitted by international agreement. It also is
3 crystal clear that it's going to result in actual notice.
4 And those are the points that courts look at when evaluating
5 whether they have discretion.

6 Now, I was going to move on to whether Your Honor
7 should exercise his discretion, but if there are other
8 questions you have --

9 THE COURT: Go ahead.

10 MR. HURLEY: Okay. So, as I said, the second
11 inquiry after you've concluded that you have discretion to
12 order the alternative form of service is whether or not that
13 discretion should be exercised in the particular case. And
14 we again submit that in this case, it clearly should be.

15 And with Your Honor's indulgence, I'd like to back
16 up and provide a little bit of background on StakeHound and
17 the nature of the dispute --

18 THE COURT: Sure.

19 MR. HURLEY: -- that we are dealing with here.

20 THE COURT: Okay.

21 MR. HURLEY: So, StakeHound is a company that was
22 organized relatively recently, our understanding, in or
23 around 2020, around an idea that StakeHound would be able to
24 provide liquidity to owners of Native tokens. So that when
25 those Native token owners stake their tokens and those

1 tokens are earning rewards, but can't otherwise be used,
2 StakeHound was going to provide a product that would allow
3 them some liquidity so they could also invest in other DeFi
4 activities.

5 The way it would work was the customer would
6 provide a Native token to StakeHound. StakeHound would
7 issue something called an ST token. The Native token would
8 remain staked, earning rewards. Those rewards would be
9 shared between StakeHound and the customer, and the customer
10 could then take the ST token and invest it in other
11 activities; DeFi, for instance.

12 In November of 2020 -- I'm sorry -- let me back up
13 -- the StakeHound and the stETH were provided on a one-to-
14 one basis, and the holder of the ST token was supposed to be
15 able to tender its ST token and get back its Native token on
16 demand.

17 THE COURT: Ms. Wickouski, have a seat. You'll
18 get plenty of chance to --

19 MS. WICKOUSKI: Thank you.

20 THE COURT: Go ahead.

21 MR. HURLEY: In November of 2020, Jason Stone, who
22 Your Honor, is familiar with, was still running Celsius'
23 DeFi operation and he had a relationship with Mr.
24 Castellano, the founder of StakeHound, and reached out to
25 Mr. Castellano and agreed that Celsius would transfer the

1 nodes for about 25,000 Native ETH to StakeHound, and
2 StakeHound in issued the same number of stETH to Celsius,
3 with the understanding on Celsius' side --

4 THE COURT: Let me let me stop --

5 MR. HURLEY: Yeah, sure.

6 THE COURT: Okay. Assume for your argument today
7 --

8 MR. HURLEY: Mm hmm.

9 THE COURT: -- that I credit the allegations in
10 the adversary complaint, and subject to their being possibly
11 disputed, I would conclude that the facts would support the
12 exercise of personal jurisdiction over StakeHound. Okay.
13 You clearly set out in great detail what you consider all of
14 StakeHound's contracts with the United States.

15 MR. HURLEY: Those of which we're aware now.

16 THE COURT: That you are aware of. Okay. So,
17 subject to their being possibly refuted, because the issue
18 of how you can test personal jurisdiction is -- there are
19 alternate routes, whatever -- but let's assume that I would
20 conclude as an initial matter that you've set out facts that
21 would support personal jurisdiction. I would note that the
22 contract is actually with the UK parent, not with Celsius
23 LLC in the U.S.

24 But let's assume that I would find that there is
25 personal jurisdiction. The issue then becomes service.

1 Okay. So I see a couple of issues that go beyond just
2 service. What I read -- first off, I overrule your
3 objection and agree to accept the sur-reply that was filed.

4 You know, Ms. Wickouski's thrust of her argument
5 is about the exigent circumstances.

6 MR. HURLEY: Mm hmm.

7 THE COURT: Okay. And to me, in reviewing the
8 complaint, I separate out the claims in the adversary
9 complaint to immediately recover assets that you believe
10 Celsius is entitled to recover, and the issue of the Swiss
11 arbitration. And I'm just really focusing both of you about
12 this, because I'm really focused on the exigent
13 circumstances.

14 I mean, case law in the Southern District is split
15 about whether the plaintiff has to show what effort it made
16 to serve in accordance with The Hague Convention before you
17 move on to the alternative service, the 4(f)(3) service.
18 Here, there doesn't appear to have been any effort. So the
19 question is, what would excuse it?

20 What I really want to know, Mr. Hurley, is what
21 the status of the arbitration demand for the Swiss
22 arbitration is. If there are any exigent circumstances, it
23 would be -- look, if -- and Ms. Wickouski can disagree with
24 this -- but if this were in a purely domestic context, I
25 think the law is abundantly clear that StakeHound, if it

1 sought to compel -- if it filed an arbitration demand, would
2 violate the automatic stay.

3 Okay. I'll listen to arguments about why not, but
4 I'm sort of starting with the presumption that would violate
5 the automatic stay. How does one enforce the stay? You
6 could do it with a contempt motion. But a contempt motion
7 under 9014 has to be served in accordance with Rule 4. It
8 would raise the whole problem about -- here, it would raise
9 the problem about service in Switzerland.

10 Okay. To the extent that I would think there
11 would be -- if you've satisfied the exigent circumstances,
12 they've triggered the arbitration, the Swiss -- it's a
13 single -- the agreement provides for a single arbitrator,
14 and it's a dilemma for Celsius. Does it respond to the
15 arbitration demand, even though it violates the automatic
16 stay? So you'd have a decent argument about exigent
17 circumstances with respect to just that prod, violation of
18 the automatic stay.

19 With respect to getting your property, I have a
20 hard time seeing why you shouldn't go through The Hague
21 process to serve StakeHound in Switzerland. Yes, it would
22 take some time. But I don't see why. You know, Celsius has
23 now proposed a disclosure statement and plan. There's a
24 disclosure statement hearing. It's a lot of money. I
25 understand that. But that could be litigated by the post-

1 confirmation Debtor, or a trust, or whatever. Okay. So I
2 see less of a reason why I would permit alternate service
3 with respect to those claims. I mean, I would want to know
4 whether StakeHound would agree that it will not transfer any
5 of the assets, pending a decision in any arbitration, if
6 it's arbitrable.

7 But the violation of the automatic -- they
8 shouldn't have filed it. They shouldn't have commenced
9 arbitration. The question is how do you enforce that?
10 Normally you enforce it by motion, not by adversary
11 proceeding. You're seeking for other relief that you would
12 have to do by adversary proceeding.

13 But focus on the exigent circumstances. What is -
14 - can you tell me what the status of the arbitration demand,
15 when Celsius is required to respond, has an arbitrator been
16 selected, et cetera?

17 MR. HURLEY: I can, Your Honor. And I'll take
18 those in turn. First exigent circumstances with respect to
19 the arbitration.

20 So the arbitration demand was filed in late April.
21 There was a deadline for an answer. That deadline was in --
22 was May 25th. On May 1st, after we got the demand, we sent
23 immediately sent them a letter and we said, you know, you
24 got to --

25 THE COURT: I saw all that.

1 MR. HURLEY: One of the things -- just addressing
2 a point you just made, Your Honor -- one of the things we
3 said is we disagree with you about everything, but are you
4 willing to freeze those assets so that they're available
5 whenever we get through this dispute during agreement or
6 judgment or whatever? They ignored that. We've made a very
7 similar request four times. No agreement so far. I'll come
8 back to that when I talk about the exigent circumstances
9 with respect to the assets.

10 But with respect to the stay --

11 THE COURT: But tell me this. If May 25th was the
12 deadline for an answer, did Celsius file an answer?

13 MR. HURLEY: Celsius filed an answer limited
14 exclusively to raising the automatic stay as a bar to the
15 arbitration. And we did that very deliberately because we
16 saw case law that suggested that if you do anything other in
17 the violating proceeding --

18 THE COURT: You want to wait.

19 MR. HURLEY: -- then show up and say you're not
20 allowed to do this, you can waive your rights. Okay.

21 THE COURT: So, what happened after May 25th?

22 MR. HURLEY: So, after May 25th, there was some
23 back and forth about the initial question. We suggested the
24 Swiss Arbitration Center in the first instance that they
25 shouldn't even select an arbitrator because of the existence

1 of the automatic stay. Some letters were exchanged on that
2 point. The Swiss Arbitration Center said, we're going to
3 select an arbitrator, and that jurisdictional question will
4 be for that arbitrator to decide in the future. That
5 arbitrator hasn't been selected yet. We expect it could
6 happen any moment. Once the arbitrator is --

7 THE COURT: Tell me what their procedure for
8 selection of an arbitrator? Does each side get to propose
9 an arbitrator?

10 MR. HURLEY: So, under the agreement, we had an
11 opportunity for the parties to try to agree on arbitration -
12 - on an arbitrator within a set period of time. That period
13 of time elapsed. So it is now to the Swiss Arbitration
14 Center to select on their own an arbitrator.

15 Once that arbitrator is selected, Your Honor,
16 that's when Celsius is going to be faced with this Hobson's
17 choice of do we participate and risk waiving our rights with
18 respect to the automatic stay? Or do we ignore it and risk
19 whatever might happen in Switzerland if we don't attend.
20 And that, in our view, is precisely why when a stay
21 violation has been identified, in almost all cases some kind
22 of injunctive relief follows to say, stop.

23 And again, Your Honor, here, all we're asking for
24 is the right to serve. They'll have plenty of opportunities
25 to argue to Your Honor whatever they want about the stay,

1 whatever relief they might seek with respect to the stay.
2 Right now, all we want is the ability to serve the papers,
3 so in the event -- and we plan to come back to Your Honor
4 and seek provisional relief -- we can ask for it on a
5 schedule where by the time Your Honor it and makes a
6 decision, it won't be too late, because we had to make that
7 Hobson's choice with respect to whether you participate or
8 don't in the arbitration, for example.

9 THE COURT: So does the Swiss Arbitration Center
10 rules specify a timing? I mean, what are the steps? So
11 there -- say now the , so there. Say now the Arbitration
12 Center is to select a single arbitrator --

13 MR. HURLEY: Correct.

14 THE COURT: -- do the Swiss Arbitration Center
15 rules specify timing for, you know, a deadline for when the
16 arbitration is to be concluded, briefing, or whatever
17 submission of evidence? What does the Swiss Arbitration
18 Center rules provide?

19 MR. HURLEY: So it has detailed rules, of which I
20 have some familiarity but not encyclopedic, certainly. My
21 understanding is that once the arbitrator is selected, the
22 next step would be the arbitrator would contact the parties
23 and seek to establish a schedule of the kind that you're
24 describing, seek to get information about --

25 THE COURT: (indiscernible) submits proposed terms

1 of reference and, you know -- I haven't done Swiss
2 arbitration. I did a bunch of our international ICC and
3 other tribunals.

4 MR. HURLEY: Certainly, Your Honor. And our
5 expectation is that if service takes as long as six months,
6 as it's undisputed, it could take that long to affect
7 service, and we can't invoke the power of this Court for six
8 months, there's an overwhelming risk that in that six-month
9 period, we are going to have to be faced with this Hobson's
10 choice. Do we --

11 THE COURT: That's why --

12 MR. HURLEY: -- we participate or do we waive?

13 THE COURT: (indiscernible) to say I'm keenly
14 focused on the filing of the arbitration demand and the
15 consequences of an arbitration going forward against the
16 wishes of Celsius. If this was purely domestic, it would be
17 a violation of the automatic stay. I see a real distinction
18 between the filing of the arbitration demand in the face of
19 the automatic stay, and whether or not the disputes are
20 arbitrable, because that's a much more difficult question.

21 MR. HURLEY: And we're certainly not asking Your
22 Honor to reach that question today.

23 THE COURT: And the -- it does seem to me that the
24 Debtor's insistence that StakeHound agree, in effect, to
25 freeze the assets, to prevent assets being transferred to

1 Stone -- I understand about lost keys and all that. But I
2 mean, look, I don't know the extent to which StakeHound is
3 good for, you know, meeting a judgment. But if they
4 transfer assets -- if I deny your relief and they go ahead
5 and transfer assets and they're not there, they're going to
6 be facing a giant claim down the road. They'd better
7 understand that.

8 MR. HURLEY: Again, just as a reminder, for now,
9 we're not asking Your Honor to --

10 THE COURT: I understand that --

11 MR. HURLEY: -- to distribute assets --

12 THE COURT: -- but look, I --

13 MR. HURLEY: Yeah.

14 THE COURT: Okay. I'm focused on the exigent
15 circumstances.

16 MR. HURLEY: Yeah.

17 THE COURT: Let's assume I agree with you that
18 4(f)(3) gives me the discretion to authorize service through
19 alternate means on the service -- by service on their U.S.
20 counsel. Put aside the email. Okay. I really don't have
21 any question that that will be -- that will satisfy due
22 process requirements for notice.

23 If the issue were approving alternative service
24 for the rest of the relief you're seeking, I'm not sure
25 about that. I would say, go through The Hague process and

1 let's see where you are three or six months from now. But I
2 think that the risk of dissipation of assets, and most
3 focused on the arbitration about Celsius having to arbitrate
4 just when it's embarking on approval of a disclosure
5 statement and confirmation of a plan, the distraction of
6 that, I think are exigent circumstances. Okay.

7 MR. HURLEY: Can I address the --

8 THE COURT: Go ahead.

9 MR. HURLEY: -- asset issue briefly?

10 THE COURT: Yes.

11 MR. HURLEY: Your Honor hit the nail on the head
12 with respect to the two issues we've been focused on, really
13 from the beginning. You asked is StakeHound good for it?
14 Our understanding is the only assets that StakeHound has --
15 the only material assets -- 99 percent are the assets that
16 we claim Celsius gave to them. Those assets are in the form
17 of Native ETH, Native MATIC and Native DOT worth about \$90
18 million collectively at recent prices.

19 As I said, from the beginning, we've been very
20 focused on let's just reach an agreement so we're sure when
21 this is done those assets that we believe our Celsius'
22 customers' assets will be available to be distributed in
23 accordance with an agreement or with a judgment.

24 Despite having made that proposal multiple times,
25 Your Honor, the answer has always been no, which puts us in

1 very deep fear and concern, because they're not willing to
2 agree to that voluntarily, that they in fact intend to use
3 those assets to secrete those assets, to dissipate them.

4 And Your Honor knows --

5 THE COURT: Well, where do I derive that they
6 intend to do that?

7 MR. HURLEY: Well, in large measure because of
8 their refusal in the face --

9 THE COURT: Well, that's not --

10 MR. HURLEY: -- of our request.

11 THE COURT: That's not the same thing. Do you
12 have -- have you offered any evidence that StakeHound
13 intends to use those assets?

14 MR. HURLEY: The evidence is purely
15 circumstantial.

16 THE COURT: Well, what -- I haven't seen the
17 circumstantial evidence.

18 MR. HURLEY: Okay. The circumstances are --

19 THE COURT: What have you -- I mean, have you put
20 in your declaration?

21 MR. HURLEY: The circumstance I'm about to
22 describe are pled in the complaint. So --

23 THE COURT: Well, the complaint is not evidence.

24 MR. HURLEY: That's fair. But the circumstances
25 that give us --

1 THE COURT: Can you put in a declaration by
2 tomorrow that establishes the threat that StakeHound will
3 dissipate the assets?

4 MR. HURLEY: A declaration by tomorrow?

5 THE COURT: Yes.

6 MR. HURLEY: I think that's possible that we could
7 provide to you a declaration that --

8 THE COURT: Well, I'm just -- you know, you've
9 said -- I read the complaint.

10 MR. HURLEY: Yep.

11 THE COURT: Complaints not evidence.

12 MR. HURLEY: Yes.

13 THE COURT: You know, are you prepared to back it
14 up with something that -- even circumstantial evidence that
15 -- not necessarily your declaration, but somebody's
16 declaration or one or more declarations that supports a real
17 threat to dissipation of assets? I don't see it.

18 MR. HURLEY: Well, I think it raises an
19 interesting question on, you know, what we need to show in
20 order to establish that the discretion to be exercised to
21 allow us to serve. You know, we have identified the
22 circumstances that give us real concern, that we need to
23 invoke the power of the Court very swiftly. We can't wait
24 three or six months. We intend, if we are allowed to serve,
25 to bring a motion of that kind very, very promptly, to

1 describe for the Court the concerns we have in more detail.

2 For purposes of the instant motion, because it was
3 our understanding that by identifying the specter itself and
4 explaining why it is that we need to at least bring the
5 motion before Your Honor quickly and not wait three or six
6 months --

7 THE COURT: I don't think --

8 MR. HURLEY: -- would not be sufficient.

9 THE COURT: -- that mere allegations satisfies
10 exigent circumstances.

11 MR. HURLEY: It certainly wouldn't on a motion for
12 a preliminary junction. That's true, Your Honor. What
13 we're trying to explain to Your Honor, and with respect to -
14 -

15 THE COURT: Well, the cases that I've read where
16 exigent circumstances, the issue actually dig into that
17 issue. And other than the specter of allegations of risks,
18 things like that, I don't think you've set it out, other
19 than with respect to having to respond to an arbitration.
20 That seems to me, you've got the better side of that
21 argument. But that in and of itself is exigent
22 circumstances. I can't wait six months, because if you
23 don't appear and defend the arbitration, you may lose it.
24 You being Celsius, obviously.

25 MR. HURLEY: And to the extent those exigent

1 circumstances justify service of the complaint, we would
2 submit that's sufficient. We would still plan very
3 promptly, Your Honor, after service of the complaint, to
4 provide you with the papers that we believe will demonstrate
5 to you that these concerns are real and important and need
6 to be addressed right away with respect to the assets as
7 well.

8 I just -- I mean, can I give you a little flavor
9 of the position they're taking in Switzerland?

10 THE COURT: Well, you've been negotiating. Okay?
11 And I don't want to --

12 MR. HURLEY: I --

13 THE COURT: I'm not getting into that.

14 MR. HURLEY: I mean in their actual demand for
15 arbitration.

16 THE COURT: Okay.

17 MR. HURLEY: Not negotiation.

18 THE COURT: Go ahead.

19 MR. HURLEY: Okay. So, couple things that I think
20 are important to understand as content --

21 THE COURT: I didn't see the -- was the demand
22 attached to your -- it took me to find Exhibit U, which was
23 the actual staking agreement, the StakeHound agreement. It
24 didn't jump out at me, let me put it that way.

25 MR. HURLEY: Oh.

1 THE COURT: It was Exhibit U to your motion.

2 MR. HURLEY: We will give you a better roadmap to
3 the documents in our -- in the future. Apologies for that.
4 I actually don't think that we attached the demand. So, if
5 that means Your Honor doesn't want me to describe their
6 position, I will halt, but --

7 THE COURT: Go ahead.

8 MR. HURLEY: Okay. So there is -- the 25,000 ETH
9 that was provided in January of 2021, Celsius provided
10 another 35,000 ETH in February. In April, Celsius provided
11 about what's worth now about \$40 million worth of MATIC and
12 DOT to StakeHound and got back STE tokens in return for all
13 that.

14 In May, this catastrophe happens that Your Honor
15 has heard about. This is what I think Mr. Kwasteniet
16 referred to in the first day as like the muffin in the
17 window that we can see it but we can't get it.

18 StakeHound, or it's agent, Fireblocks, lost the
19 BLS keys for that 35,000 ETH, worth about \$70 million now
20 with rewards. I understand that that's -- at least
21 currently, that \$35,000 ETH can never be retrieved.

22 In this case, StakeHound has been taking the
23 position initially that that meant that Celsius can only get
24 back a pro rata share of the 25,000 that wasn't lost. Since
25 we own about 95 percent of any stETH that was ever issued,

1 you know, that's still 95 percent of the 25,000.

2 In the arbitration that they filed, Your Honor,
3 they are now arguing that what we're really entitled to is
4 only the number --

5 THE COURT: I didn't see any arbitration demand.
6 That's not attached to your affidavit, is it?

7 MR. HURLEY: That is true. We certainly will
8 supply it. You know, we can supply in connection with our
9 next set of papers. But they're arguing -- and I'm sure
10 they're -- I don't think this is going to be disputed by the
11 other side -- that they're only required to return to us the
12 Native ETH tokens. Of the 25,000-ish plus rewards that they
13 have, they're only required to return to us Native tokens
14 equal to the U.S. dollar value of ST tokens.

15 So, ST tokens, because they or their agent lost
16 35,000 of them basically have no value now. They're worth.
17 \$10 each. So all 25,000 of EST tokens, over 2,700 --

18 THE COURT: Okay. And if you arbitrate it or
19 litigate it, you're going to dispute that.

20 MR. HURLEY: Right. Okay.

21 THE COURT: (indiscernible)

22 MR. HURLEY: So, that's the position they're
23 taking, that they, because of their mistakes --

24 THE COURT: The fact that they've taken that
25 position doesn't establish -- it wouldn't establish

1 irreparable harm for an injunction. That's their position.
2 That's their legal position. Yours is to the contrary. 1

3 MR. HURLEY: One other fact. After they filed
4 their demand for arbitration, we sent them a letter and
5 said, send us back our \$40 million worth of MATIC and DOT.
6 There wasn't any loss of tokens. There's never -- you know,
7 that they got this justification they claimed --

8 THE COURT: Did they ever respond --

9 THE COURT: -- that doesn't exist. They never
10 responded. I've talked to them on multiple occasions.
11 Nobody has ever offered me a single justification, other
12 than they're holding it hostage. That's what we're dealing
13 with in this case is a situation where --

14 THE COURT: The only thing that's holding you
15 hostage, I'd say, served by The Hague Convention.

16 MR. HURLEY: My concern, Your Honor, is really --
17 it's for Celsius' customers. I refer to it as Celsius
18 coins. These are Celsius customers' coins. Ninety --

19 THE COURT: Well, you shouldn't have given them --
20 you shouldn't have transferred the stuff to them. Look, the
21 fact --

22 MR. HURLEY: Understood, Your Honor.

23 THE COURT: -- that it's Celsius' customers' coins
24 doesn't mean that you get to bypass the rules.

25 MR. HURLEY: It doesn't. But we would like an

1 opportunity in the near term to show to you that it's
2 appropriate to make sure those coins don't get dissipated
3 while the case is proceeding. That that's really all we're
4 arguing with respect to the service motion.

5 THE COURT: You don't -- do you have the
6 arbitration demand with you?

7 MR. HURLEY: I don't think we have we have it with
8 us. We could get it to you very promptly.

9 THE COURT: Let me hear from Ms. Wickouski now.
10 I'll give you a chance --

11 MR. HURLEY: Okay. Thank you, Your Honor.

12 MS. WICKOUSKI: Good morning, Your Honor. For the
13 record, Stephanie Wickouski, from Locke Lord.

14 Plaintiff's counsel has made so many factual
15 allegations, testimony of counsel. I don't even know where
16 to start, other than to say this is not a trial on a TRO.
17 The issue here is --

18 THE COURT: Did you -- if this -- do you agree
19 that if your client was in the U.S., they violated the
20 automatic stay? They would have violated the automatic stay
21 by demanding arbitration? Yes, or no?

22 MS. WICKOUSKI: No.

23 THE COURT: Why.

24 MS. WICKOUSKI: Because --

25 THE COURT: It's contrary to every case I've ever

1 -- that I've personally handled myself. How do you think
2 that they didn't by -- If they were in the United States
3 and they had sent a demand, if they had triggered the
4 arbitration, why wouldn't that violate the automatic stay?

5 MS. WICKOUSKI: Well, I think -- when I approached
6 this issue for the first time when I first got this case,
7 which was very, very recently, my immediate reaction was
8 this violates the automatic state. That's beyond per
9 adventure. And then when I investigated, when I looked at
10 the arbitration complaint, when I understood more of the
11 facts --

12 THE COURT: It wouldn't matter what's in the
13 demand, okay? Whatever -- I don't have the demand, okay?
14 But whatever is in there, just the fact of filing that
15 violated the automatic stay. Yes, or no?

16 MS. WICKOUSKI: No. Because there is an open
17 question as to whether it involved -- whether it could have
18 been brought pre-petition.

19 THE COURT: Wouldn't matter if it could be brought
20 pre-petition. Once the petition's filed, you can't do
21 anything to trigger the arbitration. It may be ultimately
22 the dispute is arbitrable. If any case -- do you have --
23 can you cite me any case that would support the proposition
24 that if StakeHound was in the U.S., they could go ahead and
25 demand arbitration in the face of the automatic stay? Any

1 case?

2 MS. WICKOUSKI: I don't have a case. But I think
3 the issue that Your Honor is raising, which is that the --
4 there is a threshold issue here as to whether the stay
5 applies or whether it should be modified by the Court to
6 allow the arbitration to continue --

7 THE COURT: That would be --

8 MS. WICKOUSKI: -- on (indiscernible) objection --

9 THE COURT: Okay.

10 MS. WICKOUSKI: -- is a threshold issue.

11 THE COURT: Yeah, I get you. To all of you...

12 MS. WICKOUSKI: And it's an issue that we're very
13 anxious to --

14 THE COURT: Stop. Let me cite one of my prior
15 opinions to you in 571 BR 80 (Bankr. S.D.N.Y. 2017) in M F
16 Global. What that decision does is recounts -- that was the
17 sixth opinion that I wrote just over the issue of
18 arbitration, where I found that the Bermuda insurers
19 violated the automatic stay and the Barton Doctrine when
20 they commenced arbitration -- sought to commence arbitration
21 in Bermuda.

22 The decision at 571 B.R. was the ultimate decision
23 when I said yes, it's arbitrable. We finally got to it
24 after five opinions before that. Okay. So it may be that
25 your client would prevail, that the dispute with Celsius is

1 arbitrable. Okay? But it's what you did -- what they did
2 to get to it being arbitrable. Okay. It may ultimately be
3 arbitrable. That can only be -- I can only determine that
4 if this case goes forward. Okay.

5 I do distinguish between the arbitration and the
6 claims for turnover, et cetera. Okay. I do think that an
7 agreement from your client to freeze the assets until all
8 this gets resolved is important. But you know, it may well
9 be that it is an arbitrable dispute. I can't -- I'm not
10 deciding that now. It wouldn't make any difference. It
11 didn't make any difference in MF Global. It took the sixth
12 opinion to finally determine that it was arbitrable.

13 MS. WICKOUSKI: We're very anxious to get to the
14 resolution of whether this is arbitrable. And Your Honor --
15 well, first of all, with respect to -- and this was -- I
16 cannot go back and dispute and respond to every single piece
17 of factual allegation that my opposing counsel has made,
18 except to say that his characterization we vigorously
19 dispute.

20 StakeHound doesn't believe these are Celsius'
21 tokens. And this is not a custodial agreement. But that's
22 a merits issue that's not before the Court.

23 THE COURT: I agree.

24 MS. WICKOUSKI: This is not a TRO hearing right
25 now. This is not a trial in the case. However, the issue

1 of arbitration, I think, really, we are anxious to have the
2 question -- in my view --

3 THE COURT: Accept service of process and make a
4 motion to compel arbitration.

5 MS. WICKOUSKI: Well, without getting into the
6 conversations -- and I think Mr. Lombardi referenced or
7 alluded to this in his email to the Court at 1:00 AM this
8 morning that the counsel had been in discussions -- were in
9 discussions several hours --

10 THE COURT: Actually, I didn't even read -- I
11 didn't read that email, so...

12 MS. WICKOUSKI: Obviously, we've been in
13 discussions and I'm --

14 THE COURT: Even today, this morning.

15 MS. WICKOUSKI: Even this morning. But you know,
16 we're not there yet in terms of having this resolved. But
17 in my view -- I'd like to address some of the Court's
18 questions with respect to what's happening in the
19 arbitration, because I would like to clarify what is going
20 on in that and what is expected to occur?

21 THE COURT: Let me ask you this. Do you expect
22 the Arbitration Center to select an arbitrator any day now?

23 MS. WICKOUSKI: I don't know. They could. I do
24 know that I've been told that it's past the point where --
25 the parties had a deadline to submit a name jointly that

1 came and went. I understand that StakeHound Swiss counsel
2 also, even after the deadline, asked Celsius' counsel if
3 they wanted to have the opportunity to select someone
4 jointly. That time has passed. But what I understand is
5 once an arbitrator is appointed, then the first thing he
6 does is ask the parties to have a conference and agree on a
7 schedule and --

8 THE COURT: So let's assume that Celsius
9 respectfully declines because the arbitration violates the
10 automatic stay. What happens then?

11 MS. WICKOUSKI: I don't know. But I can say that
12 that StakeHound would certainly be willing to work with
13 Celsius on a schedule that would postpone any substantive
14 matters or briefing until after this Court decides the
15 threshold issues, which would include jurisdiction, personal
16 jurisdiction, and arbitrability. But that all assumes that
17 proper service is made, which I think is not just a
18 technical matter. I think this is really critical.

19 THE COURT: Why isn't -- why doesn't the
20 arbitration demand and the soon to be appointed arbitrator
21 create the exigent circumstances that justify alternative
22 service? This is not -- what was involved was the issue of
23 does Celsius recover the property from StakeHound.

24 MS. WICKOUSKI: Mm hmm.

25 THE COURT: I would be more inclined to say go

1 follow the normal process of triggering your adversary -- of
2 obtaining jurisdiction. Look, you may wind up disputing the
3 existence of personal jurisdiction. It does seem to me they
4 went out of their way in their complaint to establish all
5 the indicia that would support the exercise of personal
6 jurisdiction. The issue for now -- and you'd potentially
7 have the ability to contest that. The issue for now is
8 alternative service. Okay.

9 Exigent circumstances, those cases that I've read
10 that require some showing of what did you do to try and
11 follow The Hague process, it would seem to me that where
12 your client sent the demand for arbitration triggered this
13 process in violation of the automatic stay would create the
14 exigent circumstances that could justify a Court exercising
15 discretion to permit this alternate form of service.

16 MS. WICKOUSKI: Well, I certainly understand that
17 concern. It seems to me that the -- Celsius' claim that the
18 automatic stay was violated, we haven't had due process on
19 that issue. We haven't had a chance to brief it. We
20 haven't had a chance to make our arguments to the Court. So
21 it's conclusory -- it's the exigent circumstances being
22 argued assumes that Celsius will prevail on that claim, for
23 which we haven't yet been properly served. And so it's
24 really putting the cart before the horse.

25 I think that in the Smart Study case, it said that

1 where the service under The Hague Convention is mandatory,
2 there's -- and for Rule 4(f)(3), there's not an exigent
3 circumstances exception. And I would also offer --

4 THE COURT: There isn't? Why?

5 MS. WICKOUSKI: Well --

6 THE COURT: Why -- let's assume for plain purposes
7 of our discussion that filing the arbitration demand
8 violated the automatic stay. The process goes forward in
9 the Swiss Arbitral Tribunal. They're about to appoint an
10 arbitrator. It puts Celsius in the position of, what are
11 the consequences if we don't participate?

12 MS. WICKOUSKI: Mm hmm.

13 THE COURT: That, to me, just seems to me to be
14 the exigent circumstances. Three to six months to go
15 through The Hague process to serve; it could be all over by
16 then. If Celsius stands on its rights and says, this
17 arbitration is invalid, we will not participate, they run a
18 very substantial risk of a default judgment being entered
19 against them in the arbitration. That's exigent
20 circumstances, to me.

21 MS. WICKOUSKI: I think it would be if there was -
22 - if that was really likely to happen, because the Swiss
23 arbitration was being prosecuted aggressively or accelerated
24 or moving forward on that timetable.

25 THE COURT: Once the arbitrator is appointed, they

1 have no control over what the arbitrator is going to do.

2 MS. WICKOUSKI: Well, I think -- and it's --

3 THE COURT: You're trying to shut the door on any
4 relief by the Debtor for a violation of the automatic stay.
5 I'm distinguishing that from an action for turnover of
6 assets and stuff like that that's in the complaint.

7 MS. WICKOUSKI: Your Honor, I think, in fact, we
8 would -- we would want the issue of arbitrability to be
9 decided by this Court before anything significant or
10 substantive happens in the arbitration.

11 THE COURT: Let me just tell you. If your client.
12 agrees to accept service of the summons and complaint, if
13 you want to file a motion to compel arbitration, you can do
14 that promptly and I'll decide it promptly. If the complaint
15 was served -- were deemed served today because your client -
16 - you accepted -- you were authorized to accept service of
17 the summons and complaint and you filed a motion to compel
18 arbitration next week, you'd get a hearing in a -- you know,
19 two, three weeks. It isn't going to linger, I'll tell you
20 that.

21 But two things would have to happen. Your client
22 would have to agree to accept service, have you accept
23 service, or it would accept service, and it would agree,
24 pending the outcome of a motion to compel arbitration, it
25 will freeze the assets in place. You can put words into it.

1 I'm not -- I'm using that generically. With Mr. Stone, you
2 know it's a more complicated negotiation as to what he
3 wouldn't do with assets in the meantime. But you'd get that
4 resolved fairly quickly.

5 MS. WICKOUSKI: Understood, Your Honor.

6 THE COURT: Okay.

7 MS. WICKOUSKI: I think our concern and our
8 response is that the freezing of the assets essentially is
9 the imposition of a TRO, even for -- I mean, for which we
10 haven't yet been properly served and we haven't had a chance
11 to respond. So it is putting -- it is making a decision on
12 the merits by essentially saying accepting Celsius'
13 testimony of counsel that these are their assets and we --

14 THE COURT: Look, I think. I don't know what --

15 MS. WICKOUSKI: There's been no evidence.

16 THE COURT: I don't know what StakeHound does with
17 assets in the ordinary course of its business. What I see
18 as the greatest risk is if they wind up turning stuff over
19 to Stone, which has been a long dispute pending in this
20 court.

21 I have a feeling, Ms. Wickouski, you and Mr.
22 Hurley could agree on appropriate parameters for what
23 StakeHound could do with the assets. Okay? I can just tell
24 you, it took a long time for Mr. Hurley and Stone's counsel
25 to work out what the arrangements would be, just in the

1 litigation here. It happened, though. Okay.

2 I really think that -- I'm not trying to hamstring
3 StakeHound in the ordinary conduct of its business. Okay?
4 But I don't want to find out if I conclude that the Court --
5 that serviced, alternative service is approved and the case
6 goes forward, that StakeHound just transferred everything to
7 Mr. Stone, or elsewhere.

8 MS. WICKOUSKI: I'm certain that StakeHound is not
9 going to transfer anything to Mr. Stone. But with Your
10 Honor's instruction and views on this, I would need some
11 time to speak to our client to try to propose a construct
12 under which they would be willing to accept service. It's
13 just not something that I can --

14 THE COURT: I'm not expecting you to do it as you
15 stand there now.

16 MS. WICKOUSKI: Yes. I'm good, but I'm not that
17 good.

18 THE COURT: No, I don't -- you know, I don't
19 expect you to do it now, but by Monday, I would.

20 MS. WICKOUSKI: Certainly, Your Honor. I could
21 meet that timetable.

22 THE COURT: And then, so assuming that you're
23 authorized to accept service, work out with Mr. Hurley,
24 because I assume you will make a motion to compel
25 arbitration. Work out a schedule with Mr. Hurley for a

1 motion in response and reply, and can get an argument date
2 pretty quickly from my courtroom deputy. And I'm certainly
3 prepared to proceed in that fashion.

4 But it presupposes that service has been accepted
5 and we move forward from there. I mean, you know, I give
6 you the example of MF Global. It was painful in six
7 opinions before we ultimately got to the decision where I
8 compelled arbitration in Bermuda.

9 MS. WICKOUSKI: Your Honor, I really --

10 THE COURT: And all I can say is there it was the
11 insurers --

12 MS. WICKOUSKI: Yes.

13 THE COURT: -- it was foreign insurers. I'll skip
14 some of the steps. They wound up with substantial sanctions
15 for violating the Barton Doctrine and violating the
16 automatic stay. I think that if it turned out that the
17 dispute is arbitrable, there's a question of timing.

18 Celsius is going through approval of a disclosure
19 statement, and they hope, planned confirmation. I've given
20 them dates for a confirmation hearing in October, early
21 October. You know, I think it's pretty clear that they
22 would be substantially distracted by having to arbitrate or
23 litigate these issues while plan confirmation is going on.

24 And I really -- I've said this right at the start
25 -- I mean, I really view the allegations in the complaint,

1 the counts in the complaint for turnover, is very different
2 than the automatic stay violation by triggering the
3 arbitration. I don't know. And you know, Mr. Hurley may
4 have some very good arguments why this is not arbitrable.
5 And you will have made good arguments why it is arbitrable.
6 You know, I have the -- here is the Exhibit U, with
7 Paragraph 10, is the arbitration agreement. Paragraph 9 is
8 Swiss governing law. And Paragraph 10 is the arbitration
9 clause. So I'm very wary of it.

10 MS. WICKOUSKI: Your Honor, this has been
11 extremely helpful for me, and also on behalf of our client,
12 I want to thank the Court for allowing us the opportunity
13 for an accelerated briefing schedule, because we very much
14 do want to have the issue of arbitrability resolved.

15 And I think with the additional time that the
16 Court is allowing us to Monday, I feel we'll be able to
17 revert back with a structure.

18 THE COURT: All right. Just bear with me a
19 minute. All right, I'm -- let me hear from Mr. Hurley
20 before I --

21 MS. WICKOUSKI: Thank you, Your Honor.

22 MR. HURLEY: Thank you, Your Honor. I'll just
23 answer a couple of questions you asked before. We actually
24 did provide a copy of the arbitration demand. It's Exhibit
25 I to my declaration. Apologies for not having that at my

1 fingertips before.

2 I referenced a case where email service was
3 allowed in Switzerland. It's William-Sonoma v.
4 Friendfinder.

5 THE COURT: I'm sorry. Defendant's name?

6 MR. HURLEY: William-Sonoma v. Friendfinder, 2007
7 WL 1140639. And that's 2007, Judge Jeffrey White. And you
8 asked who the judge was in the Paushok case.

9 THE COURT: Yes.

10 MR. HURLEY: That was Judge Rakoff. One point I
11 wanted to make, you asked about StakeHound being allowed to
12 engage in assorted businesses. StakeHound doesn't have any
13 business now. They have suspended their platform. They're
14 not doing anything other than they have this litigation
15 against Fireblocks in Israel. That's all they're doing.
16 They don't have any operations.

17 So I just want to make sure I understand what --
18 where we've arrived here, Your Honor. If I understand
19 correctly, you're suggesting that the parties should try by
20 Monday to reach agreement that involves its acceptance of
21 service.

22 THE COURT: Acceptance of service, scheduling --

23 MR. HURLEY: Freeze of the assets.

24 THE COURT: -- and a motion to compel arbitration.

25 MR. HURLEY: A briefing schedule and a freezing of

1 assets during that period of time.

2 THE COURT: When I say -- and I want to be clear -
3 - freezing of assets, I'm going to leave it -- that may be
4 too broad a statement.

5 MR. HURLEY: An agreement that the assets won't be
6 dissipated during the period of the briefing.

7 THE COURT: You know, with Mr. Stone, there were -
8 - and I'm not saying that the same kind of agreement is
9 appropriate -- but Mr. Stone, he was permitted to carry on
10 some BIT trading and business activity --

11 MR. HURLEY: Right.

12 THE COURT: -- you worked out --

13 MR. HURLEY: In this case, the assets are all
14 staked, so they are getting some income. But there's -- I
15 don't believe there's any other movement that would have to
16 happen. So I understand. I think it's a really sensible
17 resolution. I will, you know, I guess, point out that
18 that's an outcome we've really at Celsius been trying to get
19 to for a while. So we have to at least contemplate the
20 possibility that we're not going to get there on Monday.
21 I'm going to do everything I can to get there. If we can't,
22 how do we...?

23 THE COURT: Here is what I'm proposing. This
24 hearing will be adjourned until 2:00 PM on Monday. Okay. I
25 will -- I have something in the morning, but I have nothing

1 in the afternoon. I will hear whatever further limited
2 argument each of you wishes to make. I would hope that you
3 can come to an agreement. You know, when I -- I hope you
4 can come to an agreement how to proceed.

5 Look, assuming that Ms. Wickowski agrees to accept
6 service, I'm not even sure you can talk about a response to
7 the complaint. I'm not even sure that an answer to this
8 complaint is going to be needed right away. It does seem to
9 me that the major issue is going to be whether the dispute
10 is arbitrable or not. Okay.

11 You can discuss about what -- when would a
12 response to the complaint be required is to accept service,
13 work out a briefing schedule with respect to the motion to
14 compel arbitration. You'll get a hearing date fairly
15 promptly.

16 MR. HURLEY: And it may be that in conjunction
17 with that, Your Honor, we would propose that other issues be
18 briefed at the same time, so that Your Honor would be in a
19 position potentially to make a decision on some of the
20 issues that we touched on today.

21 THE COURT: What other issues are you talking
22 about?

23 MR. HURLEY: Well, with respect to, for instance,
24 I mean, this -- while we're here, the arbitration is
25 continuing, and if we're talking about three-week briefings.

1 THE COURT: Well, let -- I just -- on that point,
2 you discussed with Ms. Wickouski what happens to the
3 arbitration while this goes on. I'm not deciding the issue.
4 It sure looks like a pretty cut and dried issue of violation
5 of the automatic stay. This is exactly what happened in MF
6 Global. There was the plan injunction. They'd already
7 confirmed the plan, but the plan injunction was in effect.
8 It violated -- I found that it violated both the Barton
9 Doctrine and the stay in triggering -- by going -- you know,
10 filing the arbitration demand.

11 Actually, what they did was they asked Bermuda
12 Court to order the arbitration. The arbitration hadn't
13 actually started. Here, it's one step further. The
14 arbitration has already been demanded. So yeah, talk about
15 all of that.

16 MR. HURLEY: Okay. And what we're contemplating
17 here is a brief period that we'll try to negotiate with
18 respect to the stay and with respect to -- I won't use the
19 word freezing, but you know what I'm talking about when I
20 refer to --

21 THE COURT: Right.

22 MR. HURLEY: We want to be in a position where,
23 you know, at the end of that period of time, we have to come
24 back to Your Honor again and say we need some emergency
25 relief, that you have all the information in front of you

1 that you need to decide that kind of an application.

2 THE COURT: Well, the only thing I would say is I
3 don't know that I have all that information. The complaint
4 is hearsay.

5 MR. HURLEY: Correct.

6 THE COURT: I don't have declarations. I know
7 what allegations you made in the complaint.

8 MR. HURLEY: Correct. And so, what I'm proposing
9 is that maybe during this same period of time, we could make
10 some additional submissions with respect to that kind of
11 information, so that you're in a position, if we get to the
12 point where you can answer the question, with a fuller
13 record.

14 THE COURT: See what you all -- I'm not agreeing
15 to something without knowing what it is that you're
16 proposing.

17 MR. HURLEY: Understood. I just want to give you
18 a heads up that that's something we would propose.

19 THE COURT: All right. I'll see you on Monday at
20 2:00.

21 MR. HURLEY: Thank you, Your Honor.

22 THE COURT: Ms. Wickowski, is there anything else
23 you wanted to add before --

24 MS. WICKOUSKI: Your Honor, the only thing I
25 wanted to add -- and just so that no one is surprised by

1 this -- my understanding is that -- and I cringe a little
2 bit when I hear the word freezing because to me --

3 THE COURT: I'm sorry. I didn't hear that.

4 MS. WICKOUSKI: Oh, I cringe a little bit when I
5 hear the word freezing of assets, because it suggests
6 voluntarily submitting to an injunction against using any of
7 one's property. And I think that what we would have in mind
8 and in fact -- and I don't think I'm disclosing anything --
9 we've been willing to propose and discuss -- is some
10 freezing, if you will, that has exceptions for materiality.

11 THE COURT: Let me suggest this.

12 MS. WICKOUSKI: Ordinary course.

13 THE COURT: Ask Mr. Hurley for a copy of the
14 injunction that was entered in the Stone matter. It's got
15 all sorts of exceptions. And look at that.

16 MS. WICKOUSKI: Thank you, Your Honor. That's --

17 THE COURT: It may not be -- look, I don't have it
18 clearly in all the terms and it took a while for Mr. Hurley
19 and Stone's counsel to work that out, but they did.

20 MS. WICKOUSKI: Understood. Understood. Yeah, I
21 will do that. Because I think, you know, the -- no one in
22 this context would agree to a blanket 100 percent
23 unconditional freeze without their due process. But to put
24 some -- to put things in status quo (indiscernible) --

25 THE COURT: I'm using it as a -- and I've said it

1 already. When I say freeze --

2 MS. WICKOUSKI: Yes.

3 THE COURT: -- I'm using it very generically and
4 not the specific terms of what... In Stone, they agreed.
5 Ultimately, it was agreed what the terms of that would be.
6 I think it may have been modified once along the way.

7 MS. WICKOUSKI: Understood.

8 THE COURT: So I didn't -- I approved what was
9 negotiated. I don't -- let me -- I just -- as I sit here
10 now, I don't know enough about the business of your client
11 to know what would be appropriate relief and not. I'm not --
12 -- okay?

13 MS. WICKOUSKI: I understand. Well, thank you,
14 Your Honor. And mostly, I raised this just so that no one
15 is surprised, because I think my marching orders are clear.
16 But I want to make sure that I'm hearing it the same way
17 everyone else is, and the way Your Honor has --

18 THE COURT: Okay.

19 MS. WICKOUSKI: -- has enunciated.

20 THE COURT: I'll see you all on Monday at 2:00.

21 MS. WICKOUSKI: Thank you, Your Honor.

22 THE COURT: Okay. All right.

23 MR. HURLEY: Thanks, Your Honor.

24 (Whereupon these proceedings were concluded at
25 12:12 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: August 3, 2023